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OFFICE OF PETITIONS

In re Application of :
Dunn et al. :
Application No. 10/799,247 :
Filed: March 12, 2004 :
Title: Semi-Permanent Reference Electrode :

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed April 11, 2006. In the alternative petitioner has requested the petition be treated under 37 CFR 1.137(b).

The petition to withdraw the holding of abandonment is **Dismissed**.
The petition to revive under 37 CFR 1.137(b) is **Granted**.

This above-identified application became abandoned for failure to file a response to a Notice to File Missing Parts which was mailed on May 27, 2004. The Notice to File Missing Parts set an extendable two (2) month period for reply. A Notice of Incomplete Reply was also mailed on May 27, 2004 indicating that a reply was received on April 27, 2004 but the late filing fee or oath or declaration surcharge had not been submitted. No timely request for extension of time was obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on July 28, 2004. A Notice of Abandonment was mailed on March 28, 2006.

Petitioner contends that a Combined Declaration and Power of Attorney was filed on April 27, 2004, a month before the issuance of the Notice to File Missing Parts. Petitioner acknowledges a declaration was not submitted upon the filing of the application on March 12, 2004, but contends since it was filed prior to the Notice to File Missing Parts it was timely.

Petitioner's argument has been considered, but is not persuasive. Pursuant to 35 USC 111 (a)(3), the application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director.

A nonprovisional application, other than a CPA filed under 37 CFR 1.53(d), is entitled to a filing date as of the date of receipt of the specification, including claims, and any required drawing. See 37 CFR 1.53(b). The filing receipt will be mailed at the time a

determination is made that the application meets the minimum requirements to receive a filing date. The oath or declaration, basic filing fee, and for nonprovisional applications filed on or after December 8, 2004, search fee and examination fee as set forth in 37 CFR 1.16, may be filed later than the remaining application papers, but if so, they must be accompanied by the required surcharge. MPEP § 503.

Accordingly, since petitioner did not submit the declaration on March 12, 2004, the declaration required a surcharge. Further a review of the record shows a general authorization to charge fees to a deposit account was not available. As such the application was properly abandoned.

Alternative Venue

In the alternative, petitioner has requested the above petition be treated under 37 CFR 1.137(b).

The requirements for the filing of a grantable petition under 37 CFR §1.137(b) have been met. This petition is hereby **Granted**.

This application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant
Petitions Attorney
Office of Petitions